

² The Board notes that following the September 5, 2018 decision OWCP received additional evidence. However, the Board’s *Rules of Procedure* provides: “The Board’s review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal.” 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a July 1, 2018 traumatic injury in the performance of duty, as alleged.

FACTUAL HISTORY

On July 4, 2018 appellant, then a 58-year-old mail handler assistant, filed a traumatic injury claim (Form CA-1) alleging, on July 1, 2018, he sustained a right shoulder sprain and torn rotator cuff while in the performance of duty. His supervisor, L.A., reported that appellant was unloading an all-purpose container (APC) when the gate became stuck. Appellant pulled on it to open it and injured his right shoulder. He provided a July 2, 2018 statement from L.A., who described instructing appellant on how to move and close an APC on July 1, 2018. L.A. noted that the bottom gate became stuck and she was unable to open it. Appellant then tried to pull it out and she instructed him to leave it alone. The APC was deemed defective and red tagged. L.A. noted that appellant did not report an injury at that time. Appellant accepted a light-duty position, but did not return to work as scheduled on July 16, 2018.

On July 2, 2018 Dr. Joseph Montibeller, an emergency medicine physician, examined appellant and diagnosed shoulder sprain. On July 9, 2018 appellant underwent a right shoulder magnetic resonance imaging (MRI) scan which demonstrated a large full-thickness tear of the supraspinatus tendon.

On July 16, 2018 Dr. James M. Beierle, Jr., an emergency medicine physician, diagnosed shoulder pain and rotator cuff tear.

In a July 17, 2018 statement, R.D., the manager of distribution operations, noted that appellant, a new hire who underwent orientation on June 23 and 24, 2018, reported that he injured his right shoulder on July 1, 2018. Appellant noted that he felt a pop in his right shoulder while working with L.A. In a letter dated July 20, 2018, the employing establishment reported that appellant was removed from employment for unrelated improper conduct on July 19, 2018.

By development letter dated July 24, 2018, OWCP advised appellant of the deficiencies of his claim. It requested additional factual and medical evidence from him, and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

On July 6 and 11, 2018 Dr. Scott F. Sheppard, an occupational medicine specialist, described appellant's history of injury as occurring at work while he was pulling on a large rack with both of his arms just below chest level. During the repetitive pulling appellant noted acute-onset of right anterior shoulder and upper arm pain. Dr. Sheppard examined appellant and diagnosed right shoulder and bicipital pain and strain with full-thickness rotator cuff tear on MRI scan.

On July 13 and 31, 2018 Dr. Michael Pagnotto, an orthopedic surgeon, examined appellant due to a right shoulder injury which occurred at work on July 1, 2018. He noted that appellant tried to move a heavy rusted shelf and felt his shoulder pop. Dr. Pagnotto diagnosed right rotator cuff tear.

In a form report dated July 23, 2018, Dr. Christopher H. Emond, a Board-certified orthopedic surgeon, indicated that appellant injured his right shoulder on July 1, 2018 pulling a rack. He diagnosed right shoulder rotator cuff tear and opined that appellant could return to light-duty work. In an attending physician's report (Form CA-20), Dr. Emond reported that appellant felt a pop in his right shoulder while pulling a heavy drawer at work. He diagnosed rotator cuff tear and biceps tendinopathy. Dr. Emond indicated by checking a box marked "yes" that he believed that appellant's diagnosed condition was caused or aggravated by his employment duties. He further noted that the mechanism of injury was consistent with that which could cause a rotator cuff tear. In a July 23, 2018 treatment note, Dr. Emond reported appellant's right shoulder pain and noted that he had been injured at work on July 1, 2018. He diagnosed right impingement syndrome of the shoulder, and right laceration of the muscle and tendons of the rotator cuff of the right shoulder.

By decision dated September 5, 2018, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the July 1, 2018 employment incident occurred in the performance of duty, as alleged. It noted that he had not responded to its July 24, 2018 factual development questionnaire.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.⁵ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶

An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must

³ *Supra* note 1.

⁴ *W.B.*, Docket No. 18-1133 (issued January 8, 2019); *Gary J. Watling*, 52 ECAB 357 (2001).

⁵ *P.G.*, Docket No. 14-1461 (issued February 7, 2019); *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

⁶ *S.W.*, Docket No. 18-1653 (issued March 12, 2019); *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008).

be consistent with the surrounding facts and circumstances and his or her subsequent course of action.⁷ An employee has not met his or her burden of proof in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established. However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.⁸

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a July 1, 2018 traumatic injury in the performance of duty, as alleged.

Appellant did not describe how his July 1, 2018 employment incident occurred on his Form CA-1, nor did he provide a consistent narrative statement describing the circumstances of his alleged employment incident. The record variously indicates that appellant was injured July 1, 2018 while he was pulling on an APC gate, while he was moving a heavy rusted shelf, or while he was moving a large rack. Appellant provided no specific details further explaining how the alleged injury occurred.⁹

In a July 24, 2018 development letter, OWCP informed appellant of the type of evidence needed to support his claim and provided appellant a questionnaire for his completion. It afforded him 30 days to respond. Appellant did not submit a further description of how the claimed employment incident occurred.¹⁰ Without a detailed description of the circumstances of the alleged employment incident, his claim lacks specificity regarding the claimed injury.¹¹ In the absence of necessary factual evidence, appellant has not established his claim.¹²

The Board, therefore, finds that appellant has not met his burden of proof to establish his claim for compensation as he has not established that an employment incident occurred in the performance of duty on July 1, 2018, as alleged. As appellant has not established that the claimed

⁷ *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *Joseph H. Surgener*, 42 ECAB 541, 547 (1991); *Gene A. McCracken*, Docket No. 93-2227 (issued March 9, 1995).

⁸ *L.F.*, Docket No. 17-0689 (issued May 9, 2018).

⁹ *W.B.*, *supra* note 4; *S.A.*, Docket No. 18-0508 (issued July 10, 2018).

¹⁰ *W.R.*, Docket No. 16-1251 (issued April 21, 2017).

¹¹ *Id.*; *M.J.*, Docket No. 17-1810 (issued August 3, 2018).

¹² *Id.*

incident occurred as alleged, the medical evidence regarding causal relationship need not be addressed.¹³

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a traumatic injury in the performance of duty on July 1, 2018, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the September 5, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 27, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

¹³ *Id.*; *S.P.*, 59 ECAB 184 (2007).